SUPREME COURT, U. S.

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No. 1318

In the Supreme Court of the United States

OCTOBER TERM, 1968

SANFORD D. SANES,

Petitioner,

vs.

FAITH ADAMS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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No.

SANFORD D. SANES,

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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois entered in the above-entitled cause on November 22, 1968.

OPINION BELOW

The opinion of the Supreme Court of Illinois is reported at 41 Ill. 2d 381, 243 N.E. 2d 233 (1969) and is reprinted in Appendix A.

JURISDICTION

The judgment of the Supreme Court of Illinois was entered on November 22, 1968. A petition for rehearing was denied January 28, 1969. Jurisdiction of this court is invoked under 28 U.S.C., Section 1257(3). A question under the United States Constitution sought to be reviewed by this Court was timely and properly raised in the courts below.

QUESTIONS PRESENTED

1. Whether permitting the defendant to proceed to trial without the assistance of counsel in a "civil" case which could involve his imprisonment for an indefinite period was a violation of constitutional due process?

2. Whether defendant's "waiver" of assistance of counsel was a knowing relinquishment of a constitutional right?

STATUTES INVOLVED

The Illinois Paternity Act, Ill. Rev. Stats. 1967, ch. 106¾, Sec. 1, *et seq.*, is reprinted in pertinent part in Appendix B.

STATEMENT

This was an action brought under the Illinois Paternity Act (Ill. Rev. Stats., 1967 Ch. 106¾, Secs. 54-59 (Append. A, *post.*), to establish that defendant was the father of the prosecutrix's child born out of wedlock and to compel defendant to pay for the support, maintenance, education and welfare of the child as well as the medical and legal expenses of the mother.

The action was commenced with the filing of a sworn complaint with the State's Attorney of Cook County. A warrant for the arrest of the defendant was issued and on June 30, 1967 he was arrested. He was required to and posted a bail bond in the sum of $1,000.00 to secure his appearance on the date of trial.

On July 28, 1967 defendant appeared in the court but was not represented by counsel. After advising defendant of the charge against him and inquiring if he wished a trial by the court or by jury, the trial judge stated:

> "I also wish to advise you that you have a right and privilege of being represented by an attorney. You also have the right to ask that this case be tried by a jury.
>
> "I am going to ask you, are you answering ready for trial and are you asking that this court this morning hear the testimony and evidence in this case and dispose of your case even though you are not represented by a lawyer?"
>
> Mr. Sanes: "Yes". (R. 83-84)

The court did not indicate that it could grant the defendant a continuance in order to obtain counsel, nor did it advise the defendant that he had the right to move for a continuance in order to prepare his case.

The court did not advise the defendant that he had a right under the Illinois Paternity Act to submit to a blood test which would be receivable in evidence only if the test exonerated him but would be otherwise excluded. (Ill. Rev. Stats. 1967, ch. 106¾, Secs. 1, 4, Append. B, *post).*

The court did not advise the defendant of the consequences of a conviction or the possibility of indefinite imprisonment in the event the defendant failed to pay the judgment for support.

The case proceeded to trial in which the State's Attorney prosecuted the action on behalf of the respondent with the assistance of her private counsel.

The gist of the prosecutrix's testimony was that she met the defendant in New York City and again in Europe; had relations with him in Chicago, Illinois, his home city, and that he was the father of her child.

The gist of the defendant's testimony was an admission of acquaintance and intimacies with the respondent on some occasions but a denial that any intimacy he may have had with her was connected with the conception of the child in question.

The Court found the defendant guilty and then inquired into his financial circumstances. As a "customer's man" in a stock broker's office the court ascertained that the defendant earned $300.00 per month.

The court thereupon ordered the defendant to pay the respondent's hospital bills, attorney's fees, trial expenses and $150.00 per month for the support, maintenance, education and welfare of the child until attainment of majority. (R. 11).

Within thirty days after entry of judgment the defendant retained legal counsel who moved to vacate the judgment and have a new trial.

The motion was denied. Constitutional questions arising under the Federal and Illinois constitutions were raised and preserved in the defendant's motion. He prosecuted an appeal directly to the Supreme Court of Illinois. That court affirmed. Pursuant to order of the Supreme Court of Illinois Petitioner's supersedeas bond is still in effect pending disposition of this PETITION.

REASONS FOR GRANTING THE WRIT

1.

Since the Illinois Paternity Act is in essence a criminal statute more drastic than a misdemeanor, defendant's right to counsel should have been scrupulously safeguarded by the court.

Although a paternity action in Illinois is denominated a "civil proceeding" (*People ex rel. Dalman* v. *O'Malley,* 43 Ill. App. 2d 95, 98) in essence it is a criminal matter akin to other actions brought under the Illinois Criminal Code. (Ill. Rev. Stats., 1967, Ch. 38). Thus:

The action is commenced by the filing of a complaint with the State's Attorney — similar to one of the methods of prosecution under the Illinois Criminal Code. (Ill. Rev. Stats., 1967, Ch. 38 111-1 (a)).

Upon the filing of a complaint a warrant for the arrest of the defendant is issued and directed to all sheriffs, coroners, and other police officers in the State — similar to the procedure under 107-9 of the Illinois Criminal Code.

The defendant is required to post a bail bond to secure his appearance in court on the day of trial — identical to the provision for bail procedure in article 110 of the Criminal Code.

If a defendant answering to a charge under the Paternity Act refuses to give bond or security he may be committed to the county jail and incarcerated until determination of the action.

As in criminal cases, the rights of a defendant in a paternity case are protected by excluding "lie detector" evidence. (*People ex rel. Perz* v. *Schneemilch,* 65 Ill. App. 2d 337).

The very placita of the instant record on appeal was designated by the clerk as "Criminal". (R. 1).

A written responsive pleading, as in an ordinary civil case, was not required but the defendant in effect was "arraigned" and asked to plead guilty or not guilty.*

An amicable out-of-court settlement between the prosecutrix and the alleged putative father, in consideration of a release of the defendant, is not permitted in Illinois without approval of the Court. (*People* v. *Makar,* 25 Ill. App. 2d 246). (Sec. 59a of Ch. 106¾, Append. B, *post).*

The most significant criminal aspect of a proceeding under the Paternity Act is contained in Section 10 (Ill. Rev. Stats., 1967 Ch. 106¾, sec. 60). The court is empowered to require the defendant to post a bond to assure compliance with the terms of the order pertaining to the child care, support and confinement expenses of the mother. The section then provides:

> "The bond shall be payable *to the People of the State of Illinois* . . ..A refusal to enter into the bond ordered by the court, or a wilful refusal to comply with the terms of the order of child care . . . may be adjudged a contempt of court and punished accordingly, but no child care or support . . . shall accrue during the period in which the party is *imprisoned* for such contempt." (Emphasis added)

Thus, a defendant found guilty under the Illinois Paternity Act and failing to pay a judgment for support and expenses of the mother may be imprisoned until the child attains age 18. These are criminal sanctions. (Ill. Rev. Stats. 1967, ch. 106¾, secs. 52, 60).

---

* "You are charged with being the father of a child born out of wedlock, how do you plead?"

Mr. Sanes: "Not guilty." (R. 83).

In the circumstances it was important that the defendant should have been properly and fully informed of the nature of that action against him under the statute, his rights under the statute and the consequences of a finding of guilty. The court should have made certain that the defendant both *knew* and *appreciated* the significance of defending the charges *pro se* and that the defendant was aware of the importance and meaning of the rights he was waiving under the statute.

It is clear from the record that the trial court did not safeguard the right of defendant to counsel nor oversee his waiver thereof with the scrupulous regard which this court has insisted upon in felony cases. *Gideon* v. *Wainright,* 372 U.S. 335 (1963); *Williams* v. *Kaiser,* 323 U.S. 471 (1945); *Tompkins* v. *Missouri,* 323 U.S. 485 (1945); *Hawks* v. *Olson,* 326 U.S. 271 (1945); *De Meerler* v. *Michigan,* 329 U.S. 663; *Mempa* v. *Rhay,* 389 U.S. 128 (1967).

In *Williams* the Court held that the right to counsel in State felony cases is protected by the 14th Amendment and the failure of the State court to appoint counsel is a denial of Due Process. With apt pertinence to the instant case, the Court observed, at p. 496:

> "A layman is usually no match for the skilled prosecutor whom he confronts in the court room. He needs the aid of counsel lest he be the victim of overzealous prosecutors, of the law's complexity, or of his own ignorance or bewilderment."

Petitioner is mindful that the Court has repeatedly denied certiorari to review misdemeanor convictions in which the defendant did not have counsel. *Winters* v. *Beck,* 385 U.S. 907 (1966); *DeJoseph* v. *Connecticut,* 385 U.S. 982 (1966). But the criminal sanctions imposable in the instant "civil" case involves potential imprisonment for a period of up to 18 years and is more drastic than conviction for a misdemeanor.

Just as the Court in *Gideon* erased the distinction between "capital" and "non-capital" offenses in safeguarding right to counsel, the Court in the case at bar is urged to extend that protection to a "civil" case with criminal sanctions. See Annotation, "Accused's Right to Counsel under the Federal Constitution", 18 L. Ed. 1420.

In *Bloom* v. *Illinois*, ... U.S. ....., 88 S.Ct. 1477, 20 L.Ed. 522 (May 1968) the Court held that contempt of court punishable by imprisonment for 24 months was a "crime in every fundamental respect" and that "the jury trial provisions of the Constitution apply". *Pari ratione* the right to counsel provisions of the Constitution should also apply to that kind of case.

The fact that Illinois labels its paternity cases "civil" and applies its Civil Practice Act (Ill. Rev. Stat., ch. 110), so as to avoid the protection normally accorded a defendant in a criminal case should not be effective, for, as this court has observed in *N.A.A.C.P.* v. *Button*, 371 U.S. 415 at p. 429 (1962):

> "A state may not foreclose the exercise of constitutional rights by mere labels."

2.

Defendant's waiver of assistance of counsel was not a knowing relinquishment of a constitutional right and therefore Due Process was violated.

The entire colloquy between the trial court and the defendant as to his right to be represented by counsel is quoted in the Supreme Court opinion, *post* (App. A.).

The court's warning is offhand, brief, cursory,— patently inadequate and insufficient in its "advice" as to the "rights and privileges of being represented by an attorney." The Illinois Supreme Court opinion lightly touches this grave constitutional question and skips on.

In the face of potential incarceration for an indefinite period, the court did not so advise the defendant, did not tell him that he could have a continuance to engage counsel and did not inquire whether the defendant really knew or appreciated his jeopardy and the consequences of his waiver of assistance of counsel.

In the recent case *McCarthy* v. *United States* (April 2, 1969, 37 L.W. 42, 85), this court quoting from *Johnson* v. *Zerbst,* 304 U.S. 458, 464 (1938), observed:

> "... waiver to be valid under the Due Process Clause ... must be 'an intentional relinquishment or abandonment of a known right or privilege'."

A waiver of the right to counsel in a criminal case must be an "intelligent" or "understandable" waiver. *Moore* v. *Michigan,* 355 U.S. 165 (1957); *Rice* v. *Olsen,* 324 U.S. 786 (1945).

The elements to validate such waiver are not present in the case at bar.

CONCLUSION

Under the guise of treating a paternity action as a "civil proceeding", important rights usually accorded defendants in criminal cases were seriously abridged in the instant case. The decision below is contrary to the spirit and holdings of this court in right-to-counsel cases.

For the foregoing reasons this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Opinion of the Supreme Court of Illinois

Docket No. 41217 — Agenda 47 — September, 1968

THE PEOPLE *ex rel.* FAITH ADAMS, *Appellee*, v. SANFORD D. SANES, *Appellant.*

MR. JUSTICE KLUCZYNSKI delivered the opinion of the Court:

This is an appeal from an order entered in a paternity action before a magistrate of the circuit court of Cook County adjudging defendant Sanford D. Sanes to be the father of a child born out of wedlock and ordering him to pay the sum of $150 per month toward the support of the child. The order further required him to pay the relatrix $500 for expenses during pregnancy, confinement and recovery, $250 in attorney's fees and $195 for trial expenses. The jurisdiction of this court is invoked because it is alleged that "questions of serious dimension are raised with respect to the constitutionality of the provision in the Paternity Act authorizing the award of attorney's fees, the alleged infringement of defendant's right to a fair trial and his right to assistance of legal counsel."

Section 9 of the Paternity Act, in relevant part, provides: "If such judgment [finding defendant to be the father] is entered the court shall take evidence upon the requirements of the child for its support, maintenance, education and welfare, and upon the expenses of the mother during pregnancy, confinement and recovery, and for reasonable attorney's fees and shall enter an order with respect thereto." (Ill. Rev. Stat. 1967, chap. 106¾, par. 59.)

Upon oral argument in this court, the relatrix's counsel conceded that this section does not authorize the allowance of trial expenses and that that provision of the order appealed from must be stricken. Of course, this concession does not affect the balance of defendant's challenge to the section which is made on two grounds: (1) that the allowance of attorney's fees violates section 13 of article IV of the Illinois constitution in that the title of the Act does not indicate that such fees are allowed in section 9; and (2) that the allowance of these fees therein is inconsistent with section 4 of the Act which provides that the action shall be commenced by the State's Attorney upon the request of the mother.

The contended constitutional restriction provides that: "No act hereafter passed shall embrace more than one subject, and that shall be expressed in the title." The title of the Paternity Act reads: "An Act in relation to the paternity of children born out of wedlock, to provide for the liability of the parents of such children, and to repeal an Act herein named." "To render a provision in the body of a statute void as not embraced in its title, the provision must be one which is incongruous, or which has no proper connection with the title." (*People ex rel. Gutknecht* v. *City of Chicago*, 414 Ill. 600, 608.) "The constitution is obeyed if all the provisions of the act relate to one subject indicated in the title and are parts of it, or incident to it, or reasonably connected with it, or in some reasonable sense auxiliary to the object in view." (*Memorial Gardens Ass'n* v. *Smith*, 16 Ill.2d 116, 129.) In our judgment, there is sufficient connection and harmony between the title and provision in question here to satisfy the constitutional mandate. See *Pasfield* v. *Donovan*, 7 Ill.2d 563, 569-70.

Defendant claims that section 4 vests all proceedings under the Act, including its enforcement, solely in the State's Attorney of the respective county where the action is instituted, making the allowance of attorney's fees improper as payments to a public official. This section provides that the State's Attorney shall upon request of the woman file a complaint on her behalf, and it further provides that if the woman is an applicant for or a recipient of assistance under the Public Assistance Code she may request the Department of Public Aid to file a complaint in her behalf through the Attorney General. But we find no language in the section or in the remainder of the Act making it mandatory for a woman seeking relief under the Act to call upon these public agencies to institute her action. Rather, it seems clear that the legislature intended to provide a prosecutrix with an alternative procedure to retaining private counsel. If she elects to proceed exclusively through public agencies, she is, of course, not entitled to any fee allowance; but where, as in the instant case, private counsel is engaged to assist in preparing and/or prosecuting an action under the Act, application for the fee allowance provided by section 9 is proper.

Defendant next contends that fundamental principles of fairness and the constitutional right to legal counsel have been breached in this case. The defendant was served with the warrant on June 30, 1967, made bond, and the cause was continued to July 28, 1967. On that date he appeared without counsel and the following colloquy ensued:

"The Court: You are charged with being the father of a child born out of wedlock, how do you plead?

Mr. Sanes: Not guilty.

The Court: Do you wish to be tried by this court or by a jury?

Mr. Sanes: This court.

The Court: Sir, I wish to advise you, if you are answering ready for trial, I wish to advise you that in the event the *(sic)* finds you guilty, I will assess a certain sum each and every week until the child reaches the age of eighteen unless the child is adopted or expires.

I also wish to advise you that you have a right and privilege of being represented by an attorney. You also have the right to ask that this case be tried by a jury.

I am going to ask you are you answering ready for trial and are you asking this court this morning hear and dispose of your case even though you are not represented by a lawyer?

Mr. Sanes: Yes."

The record discloses that defendant, 35 years of age, a life-long resident of Chicago, single and living with his father, employed as a stock broker, met the relatrix in New York City in 1963, vacationed with her in Europe in 1964, lived with her for a period of six weeks in 1964 and obtained motel accommodations for her in Chicago in April 1966. He certainly emerges as a cosmopolitan personality, fully cognizant of his rights and able to appreciate the trial court's admonishment to him. We find no merit to his contention that he was compelled to go to trial without benefit of counsel or proper understanding of the complaint against him, or was in any manner denied due process of law.

The instant action was initiated by the prosecutrix signing a form complaint furnished by the State's Attorney's office. That complaint recited that the child in question was born "in Cook County" whereas the defendant in his mo-

tion for new trial produced documentary evidence showing that the child was born in Davidson County, Tennessee. The prosecutrix never testified as to where the child was born and defendant now argues that "the false statement in the complaint as to the birth place of the child * * * is a sufficient variance with the proof offered * * * to entitle [him] to a new trial." For a variance to constitute reversible error, however, it must be shown to be material, that is, the one urging it as a basis for relief must show how it worked to his prejudice. (*Stevenson* v. *Meyer*, 10 Ill.2d 335.) No such showing has been made here, either in post-trial motions or the briefs filed on appeal, and therefore the variance cannot be deemed material.

It is finally urged that defendant did not receive a fair trial because of misconduct and bias of the trial judge. This contention is bottomed on certain questions asked the defendant by the trial judge which it is asserted display the latter's partiality to the prosecution. From our examination of the entire record, we find that the instances of alleged prejudice relied upon by defendant, when read in context, are more consistent with fair play and open-mindedness than with the motives ascribed to the court by defendant. It must be remembered that a trial judge is not required to sit mute even in a jury trial; he may ask questions to elicit the truth and clarify the issues. *People* v. *Smith*, 18 Ill.2d 547.

We have carefully reviewed the record in this case in light of the defendant's contentions and it is our conclusion that he received a fair trial and that the greater weight of the evidence supports a guilty finding. Therefore, the judgment with the exception of the $195 award for trial expenses, must be affirmed.

Judgment modified and affirmed.

APPENDIX B

Ill. Rev. Stats. 1967, Ch. 106¾

PATERNITY

1. *Parties to submit to blood tests—Use of evidence.*] § 1. In a civil action, in which paternity is a relevant fact, the court, upon its own initiative, or upon motion of any party to the action, may order the mother, child and alleged father to submit to blood tests to determine whether or not the defendant shall be excluded as being the father of the child. The results of the tests shall be receivable in evidence only if definite exclusion is established. If the defendant refuses to submit to such tests, such fact shall not be disclosed upon the trial.

* * *

4. *Effect of blood tests.*] § 4. If the court finds, as disclosed by the evidence based upon the tests, that the alleged father is not the father of the child, the question of paternity shall be resolved accordingly. If the experts disagree in their findings, such findings shall not be admissible, and the question of paternity shall be submitted upon all the evidence.

* * *

52. *Liability of father and mother to child.*] § 2. The father of a child born out of wedlock whose paternity is established in a proceeding under this Act shall be liable for its support, maintenance, education and welfare, until the child's attainment of age 18 or until the child is legally adopted, to the same extent and in the same manner as the father of a child born in lawful wedlock is liable for its support, maintenance, education and welfare.

* * *

53. *Liability of father for maternity expenses.*] § 3. A father whose paternity is so established shall also be liable for the reasonable expenses of the mother during the period of her pregnancy, confinement and recovery, which liability may be determined and enforced in the proceeding in which paternity is established or in any subsequent proceeding to enforce liability for the support, maintenance, education and welfare of the child.

54. *Institution of the action.*] § 4. A proceeding to establish the paternity of a child born out of wedlock and to establish and enforce liability for its support, maintenance, education and welfare shall be instituted in the circuit court.

Such action may be instituted only on the filing of a complaint in writing by the mother of a child born out of wedlock, or by a woman who is pregnant with child, which, if born alive, may be born out of wedlock, accusing, under oath or affirmation, a person with being the father of such child. The several State's Attorneys within their respective counties shall, upon the request of such woman, file the complaint on her behalf and proceed forthwith in the enforcement of this Act. If the woman is an applicant for or a recipient of assistance as defined in Section 1-8 of the "Public Assistance Code of Illinois", approved August 4, 1949, as amended, as a consequence of pregnancy with or birth of the child, she may request the Department of Public Aid to file a complaint in her behalf under this Act. The Department shall refer her complaint to the Public Assistance Claims Enforcement Division of the office of the Attorney General as provided in Section 2-7 of the Public Assistance Code for enforcement by the Attorney General. Upon such request the Attorney General shall file a complaint in her behalf or request the appropriate State's

Attorney to institute such action as provided in said Section 2-7. The action may be filed in the county where the complainant may be so pregnant or delivered, or where the person accused may reside or be found. No such action may be brought after the expiration of 2 years from the birth of the child; provided, that where the person accused has acknowledged the paternity of the child by a written statement made under oath or affirmation or has acknowledged the paternity of such child in open court, prosecution may be brought at any time within 2 years from the last time such acknowledgment was made or within 2 years from the last time the person accused contributed to the support, maintenance, education and welfare of the child subsequent to such acknowledgment; and, provided further, that the time any person so accused is absent from the State shall not be computed. As amended by act approved July 8, 1965. L. 1965, p. ....., H.B. No. 1164.

54. *Institution of the action.*] § 4. A proceeding to establish the paternity of a child born out of wedlock and to establish and enforce liability for its support, maintenance, education and welfare may be instituted in a court having jurisdiction of cases coming within the terms of the "Family Court Act", approved April 21, 1899, as amended.

Such action may be instituted only on the filing of a complaint in writing by the mother of a child born out of wedlock, or by a woman who is pregnant with child, which, if born alive, may be born out of wedlock, accusing, under oath or affirmation, a person with being the father of such child. The several State's Attorneys within their respective counties shall, upon the request of such woman, file the complaint on her behalf and proceed forthwith in the enforcement of this Act. The action may be filed in the county where the complainant may be so pregnant or de-

livered, or where the person accused may reside or be found. No such action may be brought after the expiration of 2 years from the birth of the child, provided, that where the person accused has acknowledged the paternity of the child by a written statement made under oath or affirmation or has acknowledged the paternity of such child in open court, prosecution may be brought at any time within 2 years from the last time such acknowledgement was made or within 2 years from the last time the person accused contributed to the support, maintenance, education and welfare of the child subsequent to such acknowledgment; and, provided further, that the time any person so accused is absent from the State shall not be computed. As amended by act approved March 5, 1965. L. 1965, p. ....., H.B. No. 5.

55. *Arrest—Examination—Bond.*] § 5. Upon the filing of a complaint as provided in Section 4, under oath or affirmation before the court, the court shall thereupon issue a warrant for the apprehension of the defendant, which warrant shall be directed to all sheriffs, coroners, and other police officers in the State, and which may be served by any such officer in any county. Upon the appearance of the accused and in his presence, the court shall examine the woman, upon oath or affirmation, on the charge that he is the father of the child. The accused shall have right to controvert the charge, and evidence may be heard as in other cases within the jurisdiction of the court. If the court is of the opinion that no sufficient cause is established it shall dismiss the complaint and discharge the accused. The accused shall have the right to submit to a blood test. If the accused so submits himself, the court shall order such test administered. If the blood test shows that the accused is not the father of the child as alleged in the complaint, the accused shall be discharged forthwith by the court. If the accused admits the charge, or waives

examination of the complainant, or if after the accused has controverted the charge the court, upon examination, determines that sufficient cause appears, it shall bind the accused person, in bond, with sufficient security, to appear in court on a designated return day occurring within 30 days from the date of the bond, or as soon thereafter as the court is in session, and from day to day after the time so designated, until the final order or judgment of the court, to answer the charge and to abide the final order or judgment and not to depart without leave, to which court the bond shall be returned. In neglect or refusal to give bond and security, the court shall commit the accused to the county jail, there to be held to answer the complaint. This Amendatory Act of 1959 shall not affect in any way actions commenced prior to July 15, 1959. As amended by act approved April 15, 1965. L. 1965, p. ....., H.B. No. 71.

* * *

59. *Judgment—Court to retain jurisdiction—Determination of amount of support—Death of father.*] § 9. If the defendant has acknowledged that he is the father of the child, either at the preliminary hearing provided in Section 5 or at the subsequent trial of the issue, which acknowledgment he has not repudiated at the trial of the issue, or if on the trial of the issue the court or jury, as the case may be, finds that he is the father, the court shall enter judgment to that effect. If such judgment is entered the court shall take evidence upon the requirements of the child for its support, maintenance, education and welfare, and upon the expenses of the mother during pregnancy, confinement and recovery, and for reasonable attorney's fees and shall enter an order with respect thereto. The order may be directed to the father or mother, or both. Except where a settlement order has been entered as provided in Section 9A of this Act, the court shall retain jurisdiction of the

cause and may, upon proper prior written notice of the hearing to the parties in interest, make new or supplementary orders for the support, maintenance, education and welfare of the child as from time to time the court deems necessary, upon petition of the mother, the father, any interested person who has contributed to the support, maintenance, education and welfare of the child or assumed its support, maintenance, education and welfare, or any governmental agency interested in the support, maintenance, education and welfare of the child. Pending the initial determination of the support order, the court may make provision for bond and security to assure jurisdiction over the person of the defendant, and for the enforcement thereof by commitment of the defendant, in the manner provided in either Section 5 or 7 of this Act.

In determining the amount of support and confinement expenses to be charged to the father, the court shall take into account not only his financial condition and circumstances but also the income and resources of the mother which are or may be available for the support of the child.

* * *

60. *Bond of defendant—Enforcement.*] § 10. In any order entered pursuant to Section 9 providing for the care and support of a child and the confinement expenses of the mother, the court shall require the defendant to enter into a bond with at least one good and sufficient surety to be approved by the court, or without sureties if none can be obtained, in such amount as the court shall determine, conditioned upon compliance with the terms of the order pertaining to child care and support and the confinement expenses of the mother.

The court may from time to time require the execution of new bonds as may be necessary to assure compliance with the order of child care and support and of the confinement expenses of the mother, or any modification thereof, or to make necessary adjustments occasioned by changed circumstances of the parties.

The bond shall be payable to the People of the State of Illinois and shall be filed with and preserved by the clerk of the court. A refusal to enter into the bond ordered by the court, or a wilful refusal to comply with the terms of the order of child care and support and of the confinement expenses of the mother may be adjudged a contempt of the court and punished accordingly, but no child care or support and confinement expenses of the mother shall accrue during the period in which a party is imprisoned for such contempt.

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